

1. On October 7, 2004, the Field Administrator issued a Notice of Claim in Case No. WI-2004-0070-WI1664.
2. On June 27, 2005, the Field Administrator filed its Motion for Final Order in Case No. WI-2004-0070-WI1664, which is presently pending before the Assistant Administrator.¹
3. The parties have since reached a Settlement Agreement, which provides for the total amount of the penalty assessed in the October 7, 2004 Notice of Claim to be paid in

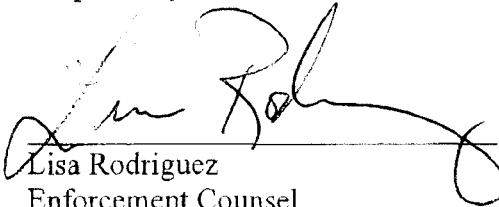
¹ The Uniform Fine Assessment generated in this case reflected one violation of one record checked; thus, no “extent” issue existed as articulated *In the Matter of Starving Students Moving Systems, Inc. d/b/a Official Moving Systems*, FMCSA 2001-10187 (March 17, 2005); likewise, no history of violations was held against Respondent; thus, no “history” issue exists as recently set forth *In the Matter of L & W Trucking, L.L.C.*, FMCSA-2001-11002 (March 17, 2005).

ten (10) payments of \$200.00 each. A copy of the Settlement Agreement is attached hereto as Exhibit A.

4. The Field Administrator submits settlement of this matter is in the public interest.

WHEREFORE, the Field Administrator respectfully requests that this matter be dismissed and the docket closed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lisa Rodriguez", is written over a horizontal line.

Lisa Rodriguez
Enforcement Counsel
Federal Motor Carrier Safety Administration
Midwestern Service Center
19900 Governors Drive
Olympia Fields, IL 60461

CERTIFICATE OF SERVICE

This is to certify that on this 27th day of July, 2005 the undersigned mailed, faxed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Richard A. Westley, Esq.
Westley Law Offices, S.C.
7633 Ganser Way, Suite 100
Madison, Wisconsin 53719

One Copy
U.S. Mail


U.S. DOT Dockets
U.S. Department of Transportation
400 Seventh Street, SW Room PL-401
Washington, D.C. 20590

One Original and One copy
U.S. Mail and Faxed

Doug Sawin
Field Administrator
Federal Motor Carrier Safety Administration
Midwestern Service Center
19900 Governors Drive
Olympia Fields, IL 60461

One Copy
Hand Delivered

Dated: 7/27/05

_____

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

IN THE MATTER OF: JOHN B. PROBST d/b/a PROBST FARMS Respondent.))))))	FMCSA- 2005-21718 No: WI-2004-0070-WI1664 Midwestern Service Center
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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made pursuant to 49 C.F.R. §386.16(c) by and between JOHN B. PROBST d/b/a PROBST FARMS ("RESPONDENT") and the United States Department of Transportation Federal Motor Carrier Safety Administration ("FMCSA").

In consideration of the discussions between the parties and other good and valuable consideration the receipt and sufficiency of which the parties acknowledge, the parties agree to settle the charges contained in the Notice of Claim dated October 7, 2004, on the following terms and conditions.

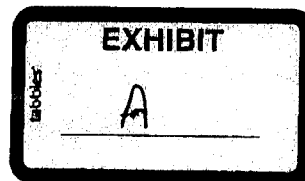
TERMS AND CONDITIONS

The parties agree as follows:

1. Respondent is a motor carrier operating commercial motor vehicles in interstate commerce and is subject to the jurisdiction of the FMCSA.
2. On October 7, 2004, the FMCSA issued a Notice of Claim charging the Respondent with a violation of the Federal Motor Carrier Safety Regulations (FMCSRs) and assessing a civil penalty in the amount of \$2,000.00 (hereinafter referred to as the "Notice of Claim"). The following violations are resolved in this Agreement:

49 C.F.R. 382.115(a) – Failing to implement a controlled substances and alcohol testing program

3. Pursuant to the Federal Claims Collection Act of 1966, 31 U.S.C. § 3711 *et seq.*, and 49 U.S.C. §§ 521, 31133, 31136, 31502, 31301 *et seq.*, and 14122 and the regulations of the FMCSA in 49 C.F.R. § 386, the parties desire to settle these claims. Any violation described in the Notice of Claim and not set forth in this Agreement is hereby withdrawn.



4. Since the time the Compliance Review of Respondent's business operation was conducted, Respondent represents that it is no longer in violation of Part 382. In consideration of the settlement of the claims, the Respondent agrees to pay pursuant to the terms of this Agreement, the amount of \$2,000.00 in accordance with the terms set forth in paragraph (7) herein.
5. Execution of the Settlement Agreement will constitute admission of the violation set forth in this Settlement Agreement and the violation shall constitute a prior offense under 49 U.S.C. §521 (b)(2)(D), which will lead to higher penalties in future enforcement actions, and adverse future SafeStat rankings.
6. Respondent agrees to pay the FMCSA, and the FMCSA agrees to accept as full payment, the entire amount of \$2,000.00. Respondent will make payment by certified check, cashier's check or money order made payable to the Federal Motor Carrier Safety Administration. To expedite processing and ensure proper credit, checks should be annotated with the FMCSA Case Number. Payments are to be mailed to:

Federal Motor Carrier Safety Administration Midwest Service Center
19900 Governors Drive, Suite 210 Olympia Fields, IL 60461-1021

Alternatively, RESPONDENT may pay electronically through the Department of Transportation's Do-It-Yourself website at <http://www.safer.fmcsa.dot.gov/> by selecting "Federal Motor Carrier Safety Administration," then "FMCSA Fine Payments."

7. Payment is due on the date indicated below:

<u>Payment Number</u>	<u>Date Due</u>	<u>Amount Due</u>
1	08/01/05	\$200.00
2	09/01/05	\$200.00
3	10/03/05	\$200.00
4	11/01/05	\$200.00
5	12/01/05	\$200.00
6	01/02/06	\$200.00
7	02/01/06	\$200.00
8	03/01/06	\$200.00
9	04/03/06	\$200.00
10	05/01/06	\$200.00

8. Payment is not received by the due date shall be considered late and will not be accepted. Failure to make timely payment shall subject Respondent to the penalties set forth in this Agreement in addition to any other penalties or remedies available by law.
9. This Agreement, when executed by the Field Administrator, is a Final Order of the FMCSA. Failure to pay in accordance with the terms of this agreement will result in the

loss of any reductions in penalties for all valid claims, and Respondent agrees that \$2,000.00 will be due and payable immediately (less any payments made). For example, if payment is not received by the due date, the payment plan set out above will be void and the FMCSA will reinstate the claims alleged in the Notice of Claim dated October 7, 2004, and take steps to immediately collect \$2,000.00. In addition, interest, penalties and administrative charges will be assessed on the remaining balance of the original civil penalty amount charged in the Notice of Claim (\$2,000.00) at the maximum allowable rate and in accordance with FMCSA procedures. If the entire amount is not paid within 90 days of the missed due date, Respondent will be prohibited from operating in interstate commerce and, if applicable, Respondent's registration will be suspended or revoked, in accordance with 49 C.F.R. §§ 386.83 and 386.84. By signing this Agreement, Respondent admits that all claims set forth in the Notice of Claim are valid and hereby waives its right to subsequently challenge the validity of such claims.

10. This Agreement is to be executed by Respondent and returned to the FMCSA Midwest Service Center. This Agreement is not binding upon the FMCSA until executed by the Field Administrator. Prior to the execution of this Agreement by the Field Administrator, this Agreement will be considered an offer in compromise by the Respondent and may not be withdrawn for a period of thirty (30) days after it is signed by the Respondent.
11. Respondent acknowledges that it has received adequate notice of the FMCSA's claim and waives any and all rights it may have to further notice or to further details of the Violations set forth in the Notice of Claim. Respondent expressly acknowledges that the FMCSA had a reasonable basis in law and fact and was substantially justified in pursuing the claims against Respondent.
12. This Agreement shall be considered jointly drafted by the parties. Prior to signing this Agreement, Respondent or Respondent's representatives had an opportunity to consult with counsel and read and understood this Agreement. The person signing on Respondent's behalf represents that he/she has full authority to sign this Agreement on Respondent's behalf and to bind Respondent.

07/26/2005 11:09 FAX 808 829 2982

WESTLEY LAW OFFICE

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on None

to 1-608-829-2982

at 7/18/2005 4:26 PM

002/00

07/18/2005 11:54 FAX 608 829 2982

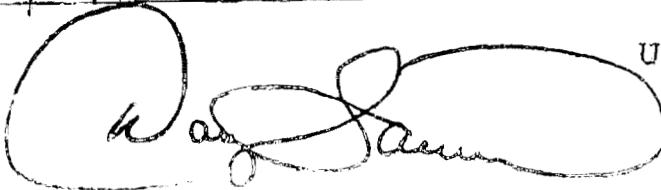
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13. If any provision of this Agreement is held invalid or illegal, such illegality shall not invalidate the whole Agreement. Instead, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

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664
39-134-4814

Case No. No: WI-2004-0070-WII
TAX ID*

John B. Seibel BY:
Date: 7-18-05



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER
SAFETY ADMINISTRATION
Midwestern Service Center

BY: Doug Sawin FIELD ADMINISTRATOR

Date: 7/25/05